



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411

BOSTON, MASSACHUSETTS 02108

(617) 727-8352

(800) 462-OCPP

MARY F. MCTIGUE
DIRECTOR

October 4, 1990
AO-90-30

Hamilton Doherty, Jr., Esquire
Bulkley, Richardson and Gelinas
Suite 2700, Baybank Tower
1500 Main Street
Springfield, MA 01115-5507

Dear Mr. Doherty:

This letter is in response to your request for an advisory opinion.

You have stated that you represent the Greater Springfield Chamber of Commerce (the "Chamber"), a Massachusetts corporation organized in accordance with M.G.L. c.180. Members of the Chamber are individuals, corporations and institutions in the greater Springfield area committed to promoting the environment and interests of the business community in the area and in the Commonwealth. The Chamber is considering certain proposals together with the members and the contributions committee of the Springfield Area Political Action Committee (the "Committee"), a multicandidate political committee registered with this office.

You have posed several scenarios concerning activity the Chamber is contemplating undertaking, for which we provide advice as indicated below.

1. It has been proposed that the name of the Committee be changed to the "Greater Springfield Chamber of Commerce Political Action Committee" or a similar name incorporating the name or a reference to the Chamber. In exchange for granting permission for the use of its name, the Chamber would be paid an annual fee in the range of \$50.00. The use of the Chamber name would be intended to involve those individuals who are currently affiliated with the Chamber. The use of the Chamber name in conjunction with the Committee is not expected to provide any benefit to the Chamber in terms of added membership or activity. The Chamber does have affiliation agreements with the Chambers of Commerce in surrounding communities (East Longmeadow, Agawam, West Springfield and Ludlow). These agreements provide for not only the use of the Chamber name, but also for professional and support activities. The fee for such affiliate status is a percentage of the dues of members in

each of these affiliate organizations. The Chamber does not currently have any relationship or agreement providing only for the use of its name. You have inquired whether this annual payment from the political committee to the Chamber represents adequate compensation for the use of the Chamber name.

Section 8 of M.G.L. c.55 states, in pertinent part: "[n]o business corporation incorporated under the laws of or doing business in the commonwealth . . . shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party."

This office has viewed not-for-profit corporations, such as the Chamber, as subject to the prohibitions contained in section 8 of M.G.L. c.55 if such corporations receive monies from business corporations and such monies are deposited into their general treasuries. This analysis is supported by a recent Supreme Court decision, Austin v. Michigan Chamber of Commerce 110 S.Ct. 1391 (1990). It is therefore the opinion of this office that the Chamber would be subject to the prohibitions contained in section 8 and could not make contributions to candidates or to political committees which supported candidates.

Section 1 of M.G.L. c.55 defines "contribution", inter alia, as "any discount or rebate not available to other candidates for the same office and to the general public."

In analyzing sections 1 and 8 of M.G.L. c.55, the Attorney General, in an opinion dated November 6, 1980, stated:

The exclusive use of corporate names and trademarks is protected by Massachusetts statutes. There also exists at common law the right to protect the use of a business name. Trade names and trademarks have been held to constitute valuable property. I am therefore of the opinion that insofar as a corporation would enforce its right to the exclusive use of its name, trademark or logo against other entities, it grants a thing of value if it allows their use by a committee or other organization. A business corporation may allow a multicandidate committee to use its name, trademark, or logo without compensation, only to the extent that it would not prohibit such use by any other individual or entity. (citations omitted; emphasis added.)

It is therefore the opinion of this office that it would be impermissible under Massachusetts law for the Committee to use the Chamber's name for any fee less than the fee that would otherwise be charged to any other individual or entity unrelated to the Chamber. Presumably such fee would be the fair market value of the name, rather than a token amount.

This office does not have enough information to determine if \$50.00 is an adequate amount to pay for the use of the Chamber's name. We would suggest, however, that if members of the general public cannot make use of the Chamber's name under the terms and conditions of the use proposed for the Committee, then it is likely that the Committee is receiving "a discount or rebate not available to other candidates for the same office and to the general public."

2. The Committee may, on occasion, utilize the mailing list of Chamber members for its own mailing and solicitations. The Chamber does make its membership list available to other organizations, on terms that vary from free of charge to charges of \$200.00. You have inquired whether a fee of \$50 plus the cost of the separate mailings, for each use of the Chamber mailing list, represents adequate compensation to the Chamber.

As we discussed above, the standard against which adequate compensation is measured is whether or not the Committee is receiving "any discount or rebate not available to other candidates for the same office and to the general public." You have mentioned that the Chamber charges up to \$200.00 for the use of its mailing list. We would suggest that this figure represents a threshold amount which should be paid by the Committee for the use of the Chamber's mailing list, provided all other terms and conditions of such use are also met. In other instances we have counseled that the price of a mailing list should be determined by using a market standard, e.g., the price at which a similar mailing list could be obtained from a third party vendor such as a direct mail house or public relations firm.

3. The Chamber publishes on a regular basis a newsletter and other communications distributed to its members reporting on the activities of the Chamber and topics of particular interest to the members. May the Chamber include in such publications, news or reports of the positions or statements of candidates on issues which are of concern to the Chamber and its members? May the Chamber include in such publications inserts or separate documents, prepared by the Committee, specifically soliciting support for the Committee, if the Committee is responsible for the cost of the preparation of the separate insert?

In the opinion cited above, the Attorney General stated:

the prohibition against corporate expenditures does not apply to expenses incident to the publication of an internal newspaper which has editorialized in favor of a particular committee or candidate, urged that contributions be made to such a committee or candidate, or sold advertising space to a candidate or a multi-candidate

committee . . . Massachusetts law . . . does not . . . ban corporate expenditures in the normal course of business which are incidental to the internal dissemination of political views through house organs or newspapers.

Thus, corporate expenditures for the publication of a periodic corporate newspaper which incidentally references a candidate or political committee are not prohibited under the provisions of M.G.L. c.55. It is therefore the opinion of this office that the Chamber may include in its periodic publications news or reports of the positions or statements of candidates on issues which are of concern to the Chamber and its members, provided that the guidelines in the Attorney General's opinion, as set forth above, are met.

If, however, the Committee includes literature with any mailing made by the Chamber, it is the opinion of this office that the Committee should reimburse the Chamber. The amount to be reimbursed to the Chamber should be determined as a percentage of the actual, total cost of the mailing, such expense to include but not be limited to the actual cost of materials used, postage, personnel and other resource costs, and the like. If actual costs cannot be computed (for example, use of office resources such as copiers and word processors) the fair market value for such items may be used.

This opinion has been rendered solely in the context of M.G.L. c.55 and has been based solely on the representations made in your letter.

Should you have additional questions, please do not hesitate to contact this office.

Very truly yours,



Mary F. McTigue
Director

MFM/wp